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Message Text

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H-03 INR-10 L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01

SP-03 SS-20 USIA-15 OMB-01 TRSE-00 JUSE-00 DRC-01

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P R 230944Z APR 74
FM AMEMBASSY MADRID
TO SECSTATE WASHDC PRIORITY 8689
INFO AMEMBASSY ATHENS
AMEMBASSY PARIS
AMEMBASSY LISBON
AMEMBASSY LONDON
USCINCEUR
USMISSION NATO
USMISSION USEC BRUSSELS

C O N F I D E N T I A L SECTION 1 OF 2 MADRID 2511

E. O. 11652: GDS
TAGS: PGOV PINS MASS SP
SUBJ: POLITICAL PRISONERS

REF: STATE 68545 (NOTAL)

1. SPAIN IS SIGNATORY TO UNIVERSAL DECLARATION OF HUMAN RIGHTS AND ITS FUNDAMENTAL CONCEPTS AND CIVIL LIBERTIES ARE REFLECTED IN ORGANIC LAW AND CHARTER ("FUERO") OF THE SPANISH PEOPLE, WHICH HAVE CONSTITUTIONAL STATUS. SUBSIDIARY LEGIEEATION SUCH AS LAW OF ASSOCIATIONS, PRESS LAW AND PUBLIC ORDER LAW, FURTHER AFFIRM FREEDOM OF ASSOCIATION, EXPRESSION AND ASSEMBLY AS ABSOLUTE PRINCIPLES BUT AT SAME TIME CONTAIN DETAILED PROVISIONS SERIOUSLY CIRCUMSCRIBING EXERCISE OF THESE RIGHTS. PENAL CODE FURTHER CIRCUMSCRIBES RIGHTS OF ASSOCIATION, EXPRESSION AND ASSEMBLY AND SPECIFIES PENALTIES FOR INFRACTION. "FUERO" ITSELF ALSO STATES CONDITIONS ON EXERCISE OF FUNDAMENTAL RIGHTS
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AND PROVIDES FOR SUSPENSION OF SOME OF THEM BY DECREE IN EMERGENCY.

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2. MAJOR LEGISLATION THAT ESTABLISHES CATEGORIES OF POLITICAL OFFENSES INCLUDES:

(A) LAW OF ASSOCIATIONS WHICH DECREES ILLEGAL PER SE ASSOCIATIONS THAT "CONTRAVENE MORALITY, PUBLIC ORDER OR SOCIAL AND POLITICAL UNITY OF SPAIN." (B) PRESS LAW WHICH CONDITIONS FREEDOM OF EXPRESSION AND DIFFUSION OF INFORMATION ON "RESPECT FOR TRUTH AND MORALITY, COMPLIANCE WITH PRINCIPLES OF NATIONAL MOVEMENT AND OTHER FUNDAMENTAL LAWS, DEMANDS OF NATIONAL DEFENSE AND STATE SECURITY, MAINTENANCE OF EXTERNAL ORDER AND INTERNAL PEACE, DUE RESPECT FOR INSTITUTIONS AND PERSONS IN HIGH ADMINISTRATIVE AND POLITICAL POSITIONS, INDEPENDENCE OF THE COURTS AND RIGHT TO PERSONAL PRIVACY, AND PERSONAL AND FAMILY HONOR. ARTICLE 78 OF SAME LAW FURTHER DECREES A GRAVE INFRACTION ... "ANY OTHER INFRACTIONS OF ILLEGAL DISPOSITIONS OR REGULATIONS WHEN THERE IS MANIFEST DETERMINATION TO DEFORM PUBLIC OPINION." (C) 1940 LAW ON "SUPPRESSION OF FREEMASONRY AND COMMUNISM", WHICH DECREASINGLY USED, MAKES IT CRIMINAL ACT TO BELONG TO MASONIC ORDER, COMMUNIST PARTY, OR SECRET SOCIETIES SHARING THEIR AIMS. (D) TITLE 2 OF PENAL CODE DEALING WITH "CRIMES AGAINST INTERNAL SECURIO
OR STATE" DEFINES WIDE RANGE
OF WHAT OFTEN ARE POLITICAL OFFENSES INCLUDING:

(1) DEFAMATION OF CHIEF OF STATE, HIGH GOVERNMENT OFFICIALS AND INSTITUTIONS, ARMED FORCES, NATIONAL SYMBOLS, CHURCH OR PRINCIPLES OF NATIONAL MOVEMENT;

(2) ILLEGAL PROPAGANDA;

(3) ILLEGAL MEETINGS;

(4) ILLICIT ASSOCIATION;

(5) BLASPHEMY;

(6) STRIKES AND SLOWDOWNS.

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PARALLEL PROVISIONS APPEAR IN CODE OF MILITARY JUSTICE. SHOULD BE NOTED, HOWEVER, THAT GOVERNMENT RARELY PROSECUTES PURELY PRIVATE EXPRESSIONS OF OPINION THAT CONTRAVENE LAWS AND IN RECENT YEARS HAS SHOWN INCREASING TOLERANCE FOR STRIKES, WHICH ARE COMMON OCCURENCE.

3. PENALTIES MAY TAKE FORM OF FINES, PRISON SENTENCES, BANISHMENT FROM SPAIN, OR RESTRICTION TO SPECIFIED AREAS, OR LOSS OF CIVIC RIGHTS AND PRIVILEGES. IN CASE OF PRESS LAW, FINE HAS BECOME MOST COMMON FORM OF SANCTION, ALTHOUGH LAW ALLOWS FOR JAIL

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SENTENCES UP TO SIX MONTHS FOR OFFENDERS WHO CANNOT OR WILL
NOT PAY.

4. MOST OFFENDERS INVOLVING INTERNAL SECURITY OF STATE ARE
TRIED BY SPECIAL TRIBUNALS, USUALLY BY CENTRALIZED PUBLIC ORDER
TRIBUNAL OR BY COURTS-MARTIAL.

5. WITH REGARD TO SAFEGUARDS AGAINST ARBITRARY ACTION, "FUERO"
AFFIRMS PRINCIPLES OF "NO CRIME WITHOUT LAW," FORBIDS EX POST
FACTO LAWS, STIPULATES WRITS OF SEARCH AND ARREST, AND REQUIRES
THAT ACCUSED MUST BE BROUGHT BEFORE COURT WITHIN 72 HOURS AFTER
ARREST. JURIES ARE NOT USED IN SPANISH JURISPRUDENCE. LAWS
ASSURE ACCUSED DEFENSE COUNSEL AND OPPORTUNITY FOR APPEAL,
ULTIMATELY TO SUPREME COURT, OR TO SUPREME MILITARY
COUNCIL IN CASE OF MILITARY JURISDICTION. DESPITE OCCASIONAL
ABUSES, THESE PROCEDURAL SAFEGUARDS ARE FAIRLY WELL OBSERVED
IN BOTH POLITICAL AND COMMON OFFENSES. "ARBITRARY" DETENTION
THEREFORE NOT SO MUCH A PROBLEM AS REPRESSIVE NATURE OF
THE LAWS THEMSELVES. "FUERO" PROVIDES FOR TOTAL OR PARTIAL
SUSPENSION OF WARRANTS REQUIREMENT AND 72 HOUR LIMIT ON
DETENTION. MOREOVER, AFTER INDICTMENT OFFENDERS AGAINST
STATE SECURITY MAY OFTEN FACE LONG PERIOD OF PRE-TRIAL DETENTION
BECAUSE OF COURTS' UNWILLINGNESS IN SECURITY CASES TO GRANT
PROVISIONAL LIBERTY.

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6. FOLLOWING ARE EXAMPLES OF PENALTIES FOR MOST COMMON TYPE OF PURELY POLITICAL OFFENSES: (A) ILLEGAL PROPAGANDA, UP TO SIX YEARS IN PRISON AND 10 THOUSAND TO 500 THOUSAND PESETAS FINE; (B) STRIKES AND SLOWDOWNS (WHICH TREATED AS SEDITION IN PENAL CODE), SIX TO 12 YEARS IMPRISONMENT AND FINES UP TO 250 THOSAND PESETAS; (C) ILLEGAL PROPAGANDA, SIX TO 12 YEARS IM-PRISONMENT AND UP TO 500 THOUSAND PESETAS FINE. (D) ILLICIT ASSOCIATION 12 TO 20 YEARS IMPRISONMENT FOR PROVEN LEADERS AND SIX TO 12 YEARS TO MEMBERS AND LOSS OF CIVIC PRIVILEGES; (E) ILLEGAL MEETINGS (CONDUCTED WITHOUT A PERMIT) ONE TO FIVE DAYS IN JAIL; (F) BLASPHEMY, UP TO SIX MONTHS IN JAIL AND UP TO 25 THOUSAND PESETA FINE.

7. ESTIMATES OF NUMBER OF POLITICAL PRISONERS VARY ACCORDING TO DEFINITION OF POLITICAL CRIMES. ACCORDING TO 1972 STATISTICS OF GENERAL DIRECTORATE OF CORRECTIONAL INSTITUTIONS, 296 PRISONERS WERE SERVING TIME IN 1972 FOR CRIMES AGAINST THE
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SECURITY OF THE STATE, LARGEST SINGLE CATEGORY OF WHICH WERE 90 CONVICTED FOR "ILLICIT ASSOCIATION." NO BREAKDOWN ON NUMBER HELD IN MILITARY PRISONS FOR SIMILAR OFFENSES, THOUGH BEST ESTIMATES ARE ABOUT 75 TO 100. IN ADDITION 200 TO 250 JEHOVAH WITNESSES NOW SERVING TIME IN MILITARY PRISONS FOR REFUSAL TO SERVE IN ARMED FORCES ON RELIGIOUS GROUNDS. AMNESTY INTERNATIONAL, WHICH DEFINES POLITIAL CRIMES MORE BROADLY, CLAIMS IN 1973 REPORT THAT "MANY HUNDRES" ARE IN PRISON FOR POLITICAL REASONS AND "SEVERAL THOUSANDS" MORE AWAIT TRIAL.

8. INTENT ON GAINING FULL ACCEPTANCE BY WESTERN EUROPE, SPANISH GOVERNMENTS IN RECENT YEARS HAVE SHOWN CONCERN OVER THEIR INTERNATIONAL IMAGE ON SUCH ISSUES AS INTERNAL REPRESSION. THERE IS EVIDENCE THAT PRESSURES BY OTHER EUROPEAN GOVERNMENTS AND BY INTERNATIONAL GROUPS SUCH AS AMNESTY INTERNATIONAL, INTERNATIONAL COMMISSION OF JURISTS AND VARIOUS HUMAN RIGHTS ASSOCIATIONS ASSOCIATIONS HAVE ENCOURAGED GREATER MODERATION IN SPAIN IN DEALING WITH POLITICAL DISSIDENTS. MY JUDGMENT IS THAT US ATTEMPTS TO INFLUENCE SPANISH POLICY AND ACTIONS IN THIS REGARD WOULD BE REJECTED BY SPAIN AS INTERFERENCE IN ITS INTERNAL AFFAIRS AND WOULD HAVE A NEGATIVE EFFECT ON OUR OVERALL RELATIONS AND SPECIFICALLY IN OUR FURTHERING NEGOTIATIONS FOR RENEWAL OF AGREEMENT OF FRIENDSHIP AND COOPERATION. CON-GRESSIONAL CUT-OFF OF MILITARY AID WOULD BE CONSIDERED

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PARTICULARLY OFFENSIVE. SPAIN IS STILL RESENTFUL OF THE ACTION TAKEN BY THE UN AFTER WORLD WAR II WHICH OSTRACIZED IT FOR A PERIOD OF YEARS, AND IS GRATEFUL TO THE US FOR THE ACTIONS IT TOOK (AMONG THEM THE BASE AGREEMENT OF 1953), TO SUPPORT HER AMONG THE FAMILY OF NATIONS. ACTIONS NOW BY THE US IN THE FORM OF PRESSURE OR PUNITIVE ACTION COULD ONLY RESULT IN GROWTH OF ANTI-AMERICANISM WHICH IS NOT CURRENT IN SPAIN NOW.

9. ASSISTANCE TO SPAIN IS QUID-PRO-QUO FOR USE OF BASES IN PROGRAM OF MILITARY COOPERATION IN SUPPORT OF WESTERN EUROPEAN DEFENSE. SPANISH MIGHT VERY WELL FAIL TO GRASP INTENDED MORAL LESSON IF US CONTINUED TO USE BASES IN SPAIN BUT DECLINED TO PAY FOR THEM ON GROUNDS GOVERNMENT GRANTING THEM IS REPRESSIVE. EVEN THOUGH US ASSISTANCE NOW DECLINING IN ECONOMIC IMPORTANCE IN CONTEXT OF OVERALL SPANISH DEFENSE EFFORT, US DECISION TO WITHHOLD REMAINING AMOUNT OF AID DUE UNDER 1970 AGREEMENT
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WOULD HAVE NEGATIVE POLITICAL IMPACT FAR BEYOND ITS SMALL DOLLAR VOLUME. SUCH US MOVE AT THIS STAGE WOULD BE REGARDED AS PERFIDIOUS, COULD INJECT NEW ELEMENT OF DISTRUST DURING CRITICAL PERIOD OTE RENEGOTIATION OF BASES AGREEMENT, AND WOULD UNDOUBTEDLY AFFECT IN A NEGATIVE MANNER OVERALL US-SPANISH RELATIONS.
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